

STATE OF ALASKA

IBLA 2000-49

Decided September 27, 2000

Appeal from a decision of the Alaska State Office, Bureau of Land Management, declining to reserve two easements requested during the approval process for conveyance of village selection F-14857-B.

Affirmed, stay denied as moot.

1. Alaska Native Claims Settlement Act: Conveyances: Easements--Alaska Native Claims Settlement Act: Easements: Access--Alaska Native Claims Settlement Act: Easements: Public Easements

BLM properly refused to reserve an easement for a trail to provide access to public land where that land has been transferred into private ownership and therefore no access to public lands or waters would be denied. A request for a site easement was also properly denied where the land sought for the easement had been transferred into private ownership and where an approved site easement exists within 3 miles of the requested rest site.

APPEARANCES: John T. Baker, Esq., Assistant Attorney General, Anchorage, Alaska, for the State of Alaska; James Mery, Esq., Fairbanks, Alaska, for Doyon, Limited; Dennis J. Hopewell, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Anchorage, Alaska, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE TERRY

The State of Alaska (appellant or State) has appealed from a July 8, 1999, decision of the Alaska State Office, Bureau of Land Management (BLM), that approved conveyance of approximately 22,000 acres of land in T. 18 N., R. 9 E. and T. 19 N., R. 10 E., Fairbanks Meridian, Alaska, to the Gwitchyaazhee Corporation on behalf of the Native Village of Fort Yukon, pursuant to section 14(a) of the Alaska Native Claims Settlement Act (ANCSA), as amended, 43 U.S.C. § 1613(a) (1994). In addition, the State petitioned for a stay of the decision pursuant to the provisions of 43 C.F.R. § 4.21(b). In the decision, BLM declined to reserve a proposed easement for a connecting spur trail between the edge of Twelvemile Lake

in sec. 22, T. 19 N., R. 10 E., Fairbanks Meridian, and the Fort Yukon-Birch Creek Trail, and a 1-acre site easement where the Fort Yukon-Birch Creek Trail intersects with Twelvemile Lake.

In its statement of reasons (SOR), appellant challenges the July 8, 1999, conveyance decision because it

approv[ed] certain lands for conveyance to the Gwitchyaaazhee Corporation without reserving easements necessary for public access under Section 17(b) of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. § 1601, 1616(b). The BLM decision fails to address in any way the extent to which public access from Twelvemile Lake, previously recognized by the agency as a major waterway, to the Fort Yukon-Birch Creek Trail – a long-established public access route the significance of which the decision recognizes – would be affected by the decision. The decision neither preserves access from the lake to the trail through the lands approved for conveyance nor identifies reasonable alternative access.

(SOR at 1-2.) The trail spur easement not approved in the 1999 conveyance decision was described in a June 9, 1982, BLM State Director's Memorandum (June 1982 Memorandum) setting forth final easement recommendations for the Native Village of Fort Yukon. The June 1982 Memorandum described the trail easement (EIN 8 D1) which was considered but not recommended at that time:

a. (EIN 8 D1) An easement for a proposed access trail fifty (50) feet in width from trail easement EIN 3 C3, C5, D1, D9 in Sec. 24, T. 19 N., R. 10 E., Fairbanks Meridian, northwesterly to public lands.

Discussion: This trail was dropped because access to this tract of public land is available across public lands in Sec. 35, T. 19 N., R. 10 E., Fairbanks Meridian.

(June 1982 Memorandum at 9.) Similarly, the site easement denied in the July 8, 1999, decision was not recommended for approval in the June 1982 Memorandum. That Memorandum described the proposed easement and the recommended disposition as follows:

I. (EIN 19 C5) A one (1) acre site easement upland of the ordinary high water mark in Sec. 25, T. 19 N., R. 10 E., Fairbanks Meridian, on the south shore of Twelvemile Lake.

Discussion: Areas for temporary camping along trail easement EIN 3, C3, C5, D1, D9 are available on public lands in Sec. 35, T. 19 N., R. 10 E., Fairbanks Meridian. A portion of Twelvemile Lake extends into public lands. Floatplanes may use this land for temporary camping, loading and unloading.

(June 1982 Memorandum at 11.)

In its SOR, the State asserts that the sole rationale for not including the requested trail easement was the 1982 argument that alternative access to an isolated tract of public land was available across other public land in sec. 35. (SOR at 3.) Since the public land which provided that access has now been conveyed through this decision, appellant claims that "the July 8, 1999 decision contains no analysis of how public access from Twelvemile Lake to the Fort Yukon-Birch Creek Trail will now be protected." Id.

Appellant makes a similar argument with respect to the denial of the 1-acre site easement on the shore of Twelvemile Lake, urging that the rationale for BLM's 1982 recommendation is no longer applicable since the public land along the lake shore relied upon by BLM as an alternative to the proposed rest site in 1982 is now in private ownership. (SOR at 4.)

In its Answer, BLM asserts that the Fort Yukon-Birch Creek Trail, 1/ which concerns the State, already is connected to Twelvemile Lake—in fact, it goes right through Twelvemile Lake, 2/ as demonstrated by the more relevant Easement Recommendation Memorandum, dated January 21, 1998, which states:

This existing winter trail facilitates intervillage travel. It connects with trail easement EIN 21 M in T. 17 N., R. 9 E., and T. 18 N., R. 10 E., and connects with trail easement EIN 2 C3, C5, D1 in T. 20 N. R. 12 E., Fairbanks Meridian. This trail provides access between Birch Creek and Fort Yukon. From Fort Yukon travelers may proceed to Chalkyitsik, Venetie Landing, Christian, or Alexanders Village on an established trail system.

(Answer at 3; Exhibit B to Answer.) With regard to an additional trail spur easement (EIN 8 D1) to provide access to public lands, BLM states that there was never an intent to use the proposed spur-trail to connect Twelvemile Lake to the Fort Yukon-Birch Creek Trail because the two are already connected. (Answer at 8.) Its purpose was always to provide public access to isolated public lands. Id. In that regard, BLM states:

Since the public lands in question are approved for conveyance in the decision on appeal, there will be no further need for public access to those lands. Reservation of an easement intended to provide public access to those lands would be improper. Moreover, as shown on Exhibit E, there are no isolated tracts of public lands adjacent to the lands being conveyed. [Footnote omitted] The record shows that BLM cannot

1/ The Fort Yukon-Birch Creek Trail is identified in some areas as EIN 3 C3, C5, D1, D9, and in other areas as EIN 21 M. (Answer at 3.)

2/ The trail is usable over the lake when it freezes in the winter.

factually or legally reserve an easement connecting the Fort Yukon-Birch Creek Trail, in section 24, T. 19 N., R. 10 E., to public lands in the northwest, as E1N 8 D1 is described to do, because no such public lands will remain.

Id.

With respect to the proposed site easement where the Fort Yukon-Birch Creek Trail intersects Twelvemile Lake, BLM states that the public lands that existed along the shore of Twelvemile Lake in 1982 were conveyed into private hands in 1983 in Interim Conveyance 651. (Answer at 6.) As BLM notes:

While no site easements were reserved at either of the two places where the trail crosses Twelvemile Lake, the land at those sites was conveyed by IC 651, Exhibit D, on May 24, 1983. The time for the State of Alaska to challenge the lack of site easements to accommodate a change in the mode of transportation from the lake to the trail has long ago passed.

Id.

Public transportation easements may be reserved from conveyances of land to Native corporations under ANCSA section 17(b), 43 U.S.C. § 1616(b) (1976), subject to principles laid down by section 903 of the Alaska National Interest Lands Conservation Act, 43 U.S.C. § 1633(a) (1994). Under that section, such easements "should be designed so as to minimize their impact on Native life styles" and "should include only such areas as are necessary for the purpose or purposes for which the easement is reserved." See State of Alaska, 137 IBLA 288, 291 (1997).

Departmental regulations implementing these provisions establish that reservations for such public easements by BLM shall be limited to those "reasonably necessary to guarantee access to publicly owned lands or major waterways and the other public uses which are contained in these regulations." 43 C.F.R. § 2650.4-7(a). "Publicly owned lands" are defined as "Federal, State, or municipal corporation (including borough) lands or interests therein in Alaska." 43 C.F.R. § 2650.0-5(r). As we stated in State of Alaska, supra:

Public easements for transportation may be reserved across lands conveyed to Native corporations "for transportation purposes which are reasonably necessary to guarantee the public's ability to reach publicly owned lands or major waterways." 43 C.F.R. § 2650.47(b)(1). Such easements may be reserved "only if there is no reasonable alternative route" (id. at (I)) and provided they are "not duplicative of one another." Id. at (ii). Whether a use is reasonably necessary, as required by these rules, is determined by examining present existing use. 43 C.F.R. § 2650.4-7(a)(3). "Present existing

use" is defined as "use by either the general public which includes both Natives and non-Natives alike or by a Federal, State, or municipal corporation entity on or before December 18, 1976." 43 C.F.R. § 2650.0-5(p).

Id. at 291-92.

[1] The record does not provide support for the two principal arguments made by the State, that failure to reserve trail easement EIN 8 D1 will prevent either access to public lands and/or a necessary connector between the Fort Yukon-Birch Creek Trail and Twelvemile Lake. The record and appellant's own submissions reflect that EIN 3, the existing Fort Yukon-Birch Creek Trail, crosses Twelvemile Lake. See Exhibit 5 to SOR. Furthermore, Exhibit E to BLM's Answer, which has not been rebutted by appellant, reflects that after the public land conveyance described in the July 8, 1999, decision, there is no remaining public land which is inaccessible, because the few parcels of public land remaining after the conveyance are already serviced by the existing Fort Yukon-Birch Creek Trail. See fn. 3 to Answer and Exhibit E. No evidence has been offered to show or suggest that the acknowledged existing Fort Yukon-Birch Creek Trail is not a satisfactory transportation link between the two villages and Twelvemile Lake, nor has information been provided by the State explaining the need for another easement to serve that same purpose. See, e.g., Chitina Native Corp., 85 IBLA 311, 333 (1985) (even land accessible only by water was not deprived of access by Native selection).

Nor do appellant's arguments concerning the denial of a 1-acre site easement indicate error in BLM's decision. As the record indicates, the land requested for such easement by appellant was the subject of a March 24, 1983, conveyance (IC 651) and is no longer subject to Federal administration. See Exhibit D to Answer. Further, we agree with BLM that appellant had the opportunity to seek a site easement at the lake crossing point at that time (1983) and failed to do so. See Answer at 6. Moreover, the record shows that a rest site easement already exists within 3 miles of the requested site on the Fort Yukon-Birch Creek Trail in T. 18 N. in sec. 25 at EIN 36 C4. See January 21, 1998, Memorandum from BLM Northern District Manager to Elizabeth Sherwood, Branch of 962 Adjudication; see also Stephanie Clusiau Memorandum to File, "Notes on the Decision of July 8, 1999," dated August 11, 1999.

The party challenging a BLM easement decision bears the burden of proving that it is in error. State of Alaska, supra at 293; Tetlin Native Corp., 86 IBLA 325, 335 (1985). That showing can be accomplished by demonstrating that BLM's action was not consistent with statutory and regulatory principles established for reservation of easements in conveyances to Native corporations. Id. Such a showing has not been made here. On the contrary, the record indicates that the trail easement sought by appellant would duplicate the existing Fort Yukon-Birch Creek Trail in providing access to Twelvemile Lake and is not required to provide continued public access to isolated public lands, because those lands have been

conveyed into private ownership. In light of our decision on the merits of the State's appeal, the request for a stay is denied as moot.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the decision appealed from is affirmed, and the Petition for Stay is denied as moot.

James P. Terry
Administrative Judge

I concur:

T. Britt Price
Administrative Judge

